COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 393 of 2002

National Insurance Co. Ltd.
Through its Divisional Manager,
Divisional Office, Tikonia, Canal Road,
Haldwani, District Nainital. ... **Appellant.**

Versus

1. Smt. Chandrakanta, W/O late Sri Vinod Sharma
2. Km. Tripti Sharma, minor D/O late Vinod Sharma,
3. Amit, S/O Late Sri Vinod Sharma,
Respondent No 2 and 3 being minor through
Their mother and Natural Guardian Res. No. 1,
All R/O 6/945 Anand Bagh
Haldwani, Distt. Nainital.

... **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 **(*in short the Act*)** against the judgment and Award, dated 23-9-2002, passed in M.A.C.T. Petition No. 167 of 2001, Smt. Chandrakanta & 2 others and another Vs. National Insurance Co. Ltd., by the Motor Accident Claims Tribunal/Addl. District Judge, F.T.C., Haldwani (Nainital) ***(hereinafter referred to as the Tribunal)***, whereby the learned Tribunal has awarded a sum of Rs. 3,23,000/- along with interest @ 9% per annum in favour of the claimants as against O.P.-appellant. Aggrieved, the Insurance Company-O.P. No.2 has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of rash and negligent driving on the part of the owner-cum-driver of the vehicle, the deceased and the question of indemnifying a dead insured does not arise.

We have heard learned counsel for the appellant, Mr. Prabhat Pandey, as well as learned counsel for the claimant-respondents, Mr. Manish Dakakoti, and have carefully gone through the entire material on record including the impugned judgment and award.

Brief facts of the case are that a motor accident occurred on 30-102001 between Haldwani and Mukteshwar motor road near Amritpur in which Vinod Sharma, who was driving his own car No. UP 02A-7436 has died as a result of grievous injuries sustained by him. Claim petition has been filed by his dependents and legal heirs stating therein that the tyre of the car of the deceased burst all of a sudden at about 10 a.m. thereby the deceased sustained grievous injuries and consequently died. He was earning Rs. 7,000/- per month from the private business and contract work and he was aged about 40 years. The O.P.-appellant contested the claim petition by filing its written statement on the ground that the quantum of compensation is highly exorbitant and imaginary. The petition is not maintainable as per provisions of the Act and that the insurance company is liable to indemnify only to the third party and not the insured himself.

The learned Tribunal framed as many as four issues in the case. Issue No.1 related to the motor accident resulting into grievous injuries and consequent death of the deceased involving a duly insured car. Issue No.2 related to the dependents of the deceased and their entitlement for compensation. Issue No. 3 related to maintainability of petition against O.P.-Insurance Company. Issue No.4 related to compensation and relief. After considering the entire evidence the Tribunal has found that the owner of the car/insured was travelling by his own vehicle and in the way, all of a sudden the tyre of the car had burst. There was no negligence in the driving of the car, therefore, it has been held that the claim petition is maintainable. It has also been observed that in

the present case, the accident was beyond the control of the driver/owner and despite all care and caution, the same could not be avoided. It has also been found that the vehicle involved in the accident was duly insured with the appellant-insurance company. The learned Tribunal has also found that the claimant-respondents are dependents and legal heirs of the deceased, therefore, they are entitled to get compensation. The Tribunal has found that the deceased was holding a valid driving licence. It has also been observed that since there was no cogent evidence in respect of income of the deceased, therefore, his income was determined at Rs. 3,000/- per month. The age of the deceased was taken to be 45 years on the basis of Post Mortem Report showing the age of the deceased about 45 years. Accordingly, the Tribunal has deducted 1/3rd of the income towards personal expenses of the deceased and worked loss of dependency at Rs. 24,000/- per annum. Ultimately, to determine the just compensation, the Tribunal has applied multiplier of 12 in the present case and worked out total loss of dependency as Rs. 2,88,000/-. In addition to it, the Tribunal has also awarded Rs. 5,000/- towards funeral expenses, Rs. 10,000/- towards loss of consortium and sum of Rs. 10,000/- each for pain and suffering and loss of love to claimant-respondent nos.2 and 3. Thus, total compensation worth Rs. 3,23,000/- has been awarded along with interest @ 9% per annum to the claimants, as mentioned earlier.

The main argument advanced on behalf of the appellant-insurance company before us is that in the present case, the deceased Vinod Sharma, i.e. the insured himself was driving his own car and that the liability of an Insurance Company is only for the purpose of indemnifying the insured against the liabilities incurred towards third person or in respect of damages to property. It has also been submitted that the Insurance Policy did not cover any risk for the injury to the owner himself, therefore, in such an event, the Insurance Company is not liable to pay compensation in

respect of death of the insured. From the perusal of entire material before us including the impugned judgment and award, it is not shown whether any extra premium was paid by the owner/insured under the heading “own damage” for covering liability towards personal injury. Therefore, unless it is shown that the Insurance Policy covered personal accident insurance of the owner, in our opinion, the Insurance Company cannot be held liable to pay compensation. The learned Tribunal has nowhere recorded any finding to the effect that the owner of the vehicle paid premium to cover personal accident insurance. In the case of ***“Oriental Insurance Co. Ltd. V. Sunita Rathi & Others [1998,A CJ,121]*** it has been held by the Apex Court that the liability of an Insurance Company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. In the instant case, the learned Tribunal has not recorded any finding that under the Insurance Policy, there was personal accident insurance of the insured/owner, therefore, in our opinion it is a case fit to be remanded to the learned Tribunal and the finding of the learned Tribunal on Issue No. 1 is liable to be set aside. The Tribunal shall decide the controversy whether the Insurance Policy covered the personal accident insurance of the owner of the vehicle or not afresh after giving opportunity of hearing to the claimants and the Insurance Company-appellant. The ultimate decision of the Claim Case No. 167 of 2001, Smt. Chandra Kanta and others Vs. National Insurance Company Ltd., shall abide by the finding on Issue No.1 to be recorded by the Tribunal.

For the reasons and discussion aforesaid, the appeal deserves to be partly allowed.

The appeal is partly allowed. The finding of Tribunal on Issue No.1 is set aside and the case is remanded to the learned

Tribunal for disposal of Issue No. 1 afresh after due notice to the claimants and the Insurance Company.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned and shall be retained till the disposal of Issue No.1 afresh. Amount already paid to the claimants shall not be recovered till the decision on Issue No.1 afresh.

26-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP